

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Revision of the Commission's Rules to Ensure)	
Compatibility with Enhanced 911 Emergency)	CC Docket No. 94-102
Calling Systems)	
)	
)	
)	
)	

ORDER

Adopted: May 10, 2001

Released: May 10, 2001

By the Chief, Policy Division, Wireless Telecommunications Bureau:

1. In this Order, we deny AT&T Wireless Services, Inc. (AT&T)'s request that we keep confidential the following exhibits attached to AT&T's Request for Waiver of the E911 Phase II Location Technology Implementation Rules¹ and certain material contained in the body of the AT&T Waiver Request that specifically relates to these exhibits:

- Exhibit C, TruePosition Test Report
- Exhibit D, Grayson E-911 Trial Technical Summary
- Exhibit F, US Wireless Location System Field Evaluation

AT&T submitted these materials to the Commission on April 4, 2001. These materials reflect test results of implementation of certain location technologies. We deny AT&T's request for confidential treatment of these materials for two reasons. First, we find that AT&T did not meet the procedural requirements for asserting confidentiality as required by 47 C.F.R. § 0.459(b). Second, AT&T did not demonstrate by a preponderance of the evidence that the materials in question were entitled to confidential treatment. Even if the materials could be deemed confidential, however, we find that the public interest requires that these materials be made available for public inspection.

2. In its April 4, 2001 letter, AT&T asserts – without explanation – that the materials “contain proprietary and confidential trade secret and commercial information that would not otherwise be available to the public.” Although some trade secrets and commercial or financial information are automatically accepted by the Commission on a confidential basis, the materials in question do not fall under these exceptions. *See* 47 C.F.R. § 0.457(d)(1). Therefore, AT&T is required to make its confidentiality request pursuant to § 0.459. *See* 47 C.F.R. § 0.457(d)(2). AT&T does not provide a

¹ AT&T Wireless Services, Inc. Request for Waiver of the E911 Phase II Location Technology Implementation Rules, CC Docket No. 94-102, filed April 4, 2001 (*AT&T Waiver Request*).

statement of reasons for withholding the materials from inspection as required by § 0.459(b).² AT&T asserts only that the materials contain proprietary and confidential trade secret and commercial information that would not otherwise be available to the public and that “each of the Exhibits is subject to a non-disclosure agreement entered into by AT&T and the relevant vendor or report preparer.” Because this request fails to comply with the standards set forth in Section 0.459(b), we deny it. *See* 47 C.F.R. § 0.459(c).

3. We also find that AT&T has not shown that the materials warrant confidential treatment. In its confidentiality request, AT&T concludes without any supporting explanation that the materials contain proprietary and confidential trade secrets and commercial information that would not otherwise be available to the public. Mere conclusory or generalized allegations cannot support a request for nondisclosure.³ Because AT&T has not presented by a preponderance of the evidence a case for nondisclosure consistent with the provisions of the Freedom of Information Act, 5 U.S.C. § 552, as required by § 0.459(d)(2) of the Commission’s rules, we deny AT&T’s request for confidential treatment.

4. Under the Commission’s rules, if after parties have exhausted all appeal rights as set forth in § 0.459(g), the request is denied, the materials will be placed in a public file. Although materials submitted voluntarily are ordinarily returned to the party seeking confidential treatment where a request for confidentiality is denied, we find that in order to facilitate our evaluation of AT&T’s request for waiver the public interest requires that the identified materials be made available for public inspection. 47 C.F.R. § 0.459(e). These materials provide information about the degree to which certain location technologies are capable of meeting the Commission’s standards for E911 Phase II implementation. Public disclosure of this information will provide an opportunity for review and analysis of this information by interested parties, which may inform our evaluation of the current state of readiness of E911 location technologies as well as our decision upon AT&T’s specific waiver request. Therefore, because of the significant public safety issues and policy reasons underlying the Commission’s E911 Phase II implementation rules, we find the public interest requires that we make the identified materials available for public inspection.

5. In an effort to continue the ongoing evaluation of the state of readiness of E911 technologies pursuant to the *E911 Fourth Memorandum Opinion and Order*⁴ and in order to evaluate AT&T’s waiver request, we also direct AT&T, a wireless carrier subject to the E911 Phase II rules, to provide further information regarding AT&T’s ability to meet Phase II requirements. AT&T is directed to provide the information as requested in the following questions and correspond its answers to the numbers relating to each question:

1. Information supporting its selection of the Mobile-Assisted Network Location System (MNLS) technology for Phase II implementation for its Time Division Multiple Access (TDMA) network. This includes the results of the MNLS field trials listed in Exhibit H of the AT&T Waiver Request, any other information documenting the accuracy of MNLS and timing of AT&T’s planned deployment, and documents supporting the claim that the accuracy of MNLS will improve

² For example, AT&T does not explain the degree to which the information is commercial or financial, the degree to which the information concerns a service that is subject to competition, nor does AT&T provide an explanation of how disclosure of the information could result in substantial competitive harm. *See* 47 C.F.R. § 0.459(b)(3)-(5).

³ *See National Exchange Carrier Ass’n, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 7184, 7184 ¶3 (1990) (quoting *National Parks and Conservation Ass’n v. Kleppe*, 547 F.2d 673, 680 (D.C. Cir. 1976)).

⁴ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17,442 (2000), *recon. pending* (*E911 Fourth Memorandum Opinion and Order*).

over time and establishing AT&T's willingness to commit to improvements.

2. Information concerning what Phase II location technology solution AT&T intends to use with respect to its wireless phones when they operate in analog mode, test results of that technology, its deployment schedule, and other information relevant to how it plans to address E911 Phase II requirements with respect to its wireless phones operating in analog mode.
3. Further information on AT&T's planned rollout of its Global System for Mobile Communications (GSM) network, including a timeline of such rollout, its planned discontinuance of service over its TDMA network as a result of its transition to a GSM network, and any information establishing that AT&T's GSM network will be 100% compliant with the Commission's E911 Phase II Location Technology Implementation Rules from the date of deployment of the GSM network.

6. AT&T shall respond to this information request within twenty (20) calendar days of the date of this order. An officer of AT&T must sign its response. Failure to file a complete and timely response may result in the imposition of administrative sanctions. AT&T may provide any additional information that it believes is relevant to this matter, and shall direct its response to:

Jennifer Tomchin
Federal Communications Commission
Policy Division
Wireless Telecommunications Bureau
445 12th Street, S.W., Room 3-C122
Washington, D.C. 20554

7. AT&T is advised that 18 U.S.C. § 1001 and 47 C.F.R. § 1.17 prohibit misrepresentations and/or willful omissions of material facts in response to Commission inquiries.

8. ACCORDINGLY, AT&T's request for confidentiality contained in its April 4, 2001 letter **IS DENIED**, to the extent indicated herein. Any application for review of this ruling must be filed within five business days of the date of this Order. 47 C.F.R. § 0.459(g). Third party owners of materials submitted to the Commission by AT&T may also participate in the proceeding resolving the confidentiality of the materials. 47 C.F.R. § 0.459(i).

9. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 308(b), and the authority delegated pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, AT&T provide the additional information requested in Paragraph 5 of this Order.

10. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent, by facsimile and by Certified Mail/Return Receipt Requested, to:

- AT&T Wireless: Douglas Brandon, Vice President – External Affairs, AT&T Wireless Services, Inc., 1150 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036
- Grayson Wireless: Eliot J. Greenwald, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007
- TruePosition, Inc.: Philip Verveer, Esq., Willkie Farr & Gallagher, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20036

- U.S. Wireless: Dr. Oliver Hilsenrath, U.S. Wireless Corporation, 2303 Camino Ramon, Suite 200, San Ramon, CA 94583.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith, Chief
Policy Division
Wireless Telecommunications Bureau